



**State of New Hampshire**  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Matthew and Melissa Arel  
110 Mason Road  
Brookline, NH 03033-2472

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 02-011**

**April 5, 2002**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Matthew and Melissa Arel, pursuant to RSA 485-A:42, 43 and Env-C 604.02. The Division is proposing that fines totaling \$6,000 be imposed against Matthew and Melissa Arel for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Matthew and Melissa Arel are individuals having a mailing address of 10 Virginia Drive, Nashua, NH 03060.

**III. Summary of Facts and Law Supporting Claims**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Matthew and Melissa Arel ("the Arels") are the owners of property located on North Mason Drive in Brookline, NH, more particularly described in town of Brookline tax maps as Map C, Lot 58-2 ("the Property").
4. On January 24, 2001, the Arels applied for a septic system construction approval permit from DES.
5. On February 22, 2001, DES granted the Arels construction approval, Permit No

CA2001032485 (the "Approval").

6. On October 5, 2001, DES personnel inspected the septic system at the Property. This inspection was performed based on information received from the Brookline Health Officer concerning a Do Not Backfill notice (the "Notice") that had been submitted by the Arels.
7. The Notice had been altered to read "Backfill," listed a construction approval number not issued to the Property, identified a licensed septic installer who had not worked on the system, and contained the signature of the DES inspector that had been copied from another form.
8. On November 5, 2001, DES issued a letter to Mr. Arel notifying him of the problems with the Notice, and requesting that Mr. Arel contact DES to discuss the matter. To date, Mr. Arel has failed to contact DES.

#### **IV. Violations Alleged and Proposed Administrative Fines**

1. Matthew and Melissa Arel have violated RSA 485-A:29, I by failing to request a final inspection of a septic system by DES personnel prior to covering the system. For this violation DES is seeking a \$2,000 fine pursuant to Env-C 604.02(f).
2. Matthew and Melissa Arel have violated RSA 485-A:29, I by covering a septic system without receiving final approval of the system from DES. For this violation, DES is seeking a \$2,000 fine pursuant to Env-C 604.02(g).
3. Matthew and Melissa Arel have violated RSA 485-A:43, I by knowingly submitting false and misleading information to DES in connection with an application for approval of a septic system. For this violation, DES is seeking a \$2,000 fine pursuant to Env-C 604.02(d).

**The total fine being sought is \$6,000.**

#### **V. Required Response, Opportunity for Hearing**

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than May 3, 2002 using the enclosed colored form.**

1. If the Arels would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If the Arels choose to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If the Arels wish to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate the Arels's interest in settling.

## VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mr. Arel committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Mr. Arel committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- \* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Mr. Arel proves, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, **and** Mr. Arel did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mr. Arel did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, Mr. Arel was making a good faith effort to comply with the requirement that was violated.
3. Mr. Arel has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Mr. Arel's case which was not known to the Division at the time the fine was proposed.

### \*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that The Arels committed the violation(s) alleged above and that the fine(s) should be imposed.


**The hearing is The Arels's opportunity to present testimony and evidence that The Arels did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If The Arels has any evidence, such as photographs, business records or other documents, that The Arels believes show that The Arels did not commit the violation(s) or that otherwise

support The Arels's position, should bring the evidence to the hearing. The Arels may also bring witnesses (other people) to the hearing to testify on The Arels's behalf.

**If the Arels wish to have an informal meeting to discuss the issues, The Arels must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If the Arels have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

  
**COPY**  
Harry T. Stewart, P.E., Director  
Water Division

Enclosure (*NHDES Fact Sheet #CO-2001*)

cc: Gretchen Rule, DES Legal Unit Administrator  
Susan Alexant, DES Hearings and Rules Attorney  
Mark Harbaugh, DES Enforcement Attorney